

## REMARKS

This paper is responsive to any paper(s) indicated above, and is responsive in any other manner indicated below.

### REQUEST FOR EXAMINER INTERVIEW AFTER FINAL REJECTION

An Examiner interview after final rejection is respectfully requested. As stated in MPEP '713.01, "Examiners may grant one interview after final rejection. See MPEP '713.09." MPEP '713.09, in turn, states, "Normally, one interview after final rejection is permitted." A substantial pendency period has already accumulated and substantial written prosecution has already been conducted in the application. At this point in time, an Examiner interview appears to be the most logical and preferred method of further prosecution in the application, i.e., an Examiner interview will accelerate prosecution by providing immediate discussion and feedback superior to the delayed discussion and feedback of normal intermittent written prosecution. Accordingly, Applicant respectfully submits the following reasons for requesting an Examiner interview. It is believed that the circumstance within the present case matches the validating circumstance for an Examiner interview as set forth in MPEP '713.01, i.e., "...the nature of the case is such that the interview could serve to develop and clarify specific issues and lead to a mutual understanding between the Examiner and the Applicant, and thereby advance the prosecution of the application," in that: it is believed that an interview would accelerate early agreement on the claims; it is believed that an interview would assist Applicant in judging the

extent of allowable subject matter in the application; and, it is believed that an interview would assist Applicant in judging the propriety and preferred mode of continued prosecution of the non-allowed claims and/or the entire application. The Examiner is respectfully requested to contact the attorney indicated on this paper at the local Washington, D.C. area telephone number of 703/312-6600 for the purpose of scheduling an examiner interview. The Examiner is thanked in advance for such considerations. Contact will also be attempted by the undersigned attorneys to schedule an Examiner Interview. In the event that the present papers, in and of themselves, are sufficient to place the application in condition for allowance, no Examiner interview would be necessary.

#### **PENDING CLAIMS**

Claims 1 and 19-24 were pending, under consideration and subjected to examination in the Office Action. At entry of this paper, Claims 1 and 19-24 remain pending for further consideration and examination in the application.

#### **ALLOWED CLAIM(S)**

Claims 1, 19 and 22-23 have been allowed in the application, as indicated within the "Allowable Subject Matter" section on page 5 of the Office Action. Applicant and the undersigned respectfully thank the Examiner for such indication of allowable subject matter.

### REJECTION UNDER 35 USC '103

The 35 USC '103 rejection of claims 20, 21 and 24 as being unpatentable over Mochizuki (US 20010037305 A1) is respectfully traversed. All descriptions of Applicant's disclosed and claimed invention, and all descriptions and rebuttal arguments regarding the applied prior art, as previously submitted by Applicant in any form, are repeated and incorporated hereat by reference. Further, regarding any descriptions and rebuttal arguments concerning Applicant's invention and/or the applied prior art as included herein, yet found to be corrective over prior descriptions and rebuttal arguments, such corrective descriptions and rebuttal arguments should be considered to supersede prior descriptions and rebuttal arguments. Still further, all Office Action statements regarding the prior art rejections are respectfully traversed. As additional arguments, Applicant respectfully submits the following.

Comments associated with the Office Action rejection characterize limitations following Applicant's "adapted to" clause as statements of "intended use" or "field of use", which "do not serve to patentably distinguish the claimed structure over that of the reference." Such comments further cite the legal cases of: In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458; and, Ex parte Masham, 2 USPQ2d 1647. **Strong traversal is appropriate.**

More particularly, **none** of such legal cases is specifically focused on how "adapted to" claim limitations should specifically be interpreted. In fact, five (5) out of the cases **DO NOT EVEN HAVE "ADAPTED TO" LANGUAGE WITHIN THEIR DISPUTED CLAIMS**, i.e., it is respectfully submitted that such cases are

**IRRELEVANT regarding interpretation of “ADAPTED TO” claim language.**

While the In re Finsterwalder case does have “ADAPTED TO” language within its claims, the opinion in such legal case is **concerned with the interpretation of differing language** within the disputed claims, i.e., it is respectfully submitted that In re Finsterwalder is also **not particularly relevant to regarding interpretation of “ADAPTED TO” claim language.**

Instead, regarding the Office Action’s concerns regarding the “**adapted to**” language within Applicant’s claims, it is respectfully noted that **USPTO MPEP guidelines themselves validate use of “adapted to” claim language** (in contrast to the Examiner’s position). That is, **MPEP 2173.05(g)** describes the legal case of In re Venezia, 530 F.2d 956, 189 USPQ 149 (CCPA 1976), having the limitations of “a pair or sleeves ...each sleeve of said pair **adapted to** be fitted over the insulating jacket of one of said cables” [Emphasis added], wherein the court (CCPA) held that **such language “imparts a structural limitation** to the sleeve. Each sleeve is **so structured or dimensioned** that it can be fitted over the insulating jacket of a cable” [Emphasis added]. Accordingly, regarding Applicant’s claims, it is respectfully submitted that use of “adapted to” language is proper, and Applicant’s claimed component(s) having “adapted to” language should be interpreted as being “so structured or dimensioned” (i.e., constructed or configured) to provide the further recited limitations (e.g., operations).

In any event, the disputed “adapted to” language has been removed from claims 20, 21 and 24, in order to remove such issue from prosecution and move the application along the path toward allowance. Such removal should not be taken as

an acquiescence regarding the Examiner's interpretation of "adapted to" language, but instead, is merely taking a path of least resistance toward allowance.

Regarding a substance of the 103 rejection, Applicant's disclosed and claimed invention as set forth in claim 20 (for example) relates to a technique to collect traffic information such as a drive history of a vehicle at a centralized location (e.g., an "information center"). In order to encourage drivers to voluntarily supply their drive history back to such centralized location, a charge imposed on a driver for services (e.g., downloading of updated map information) from the centralized location is defined in accordance with the recording ratio of said drive history information. As one (non-limiting) example, if there were ten (10) differing types of possible data (e.g., road link ID, day/time, etc.) which a driver can agree to supply, and a specific user only agreed to supply half of such types of data, then such user may be give half a maximum discount which is possible (e.g., 20% out of a maximum 40% discount). The more data the user agrees to be supplied back to the centralized location, the greater his/her discount. In order to indicate a degree of driver cooperation in supplying data, **Applicant's invention calculates and records a "recording ratio"**.

In terms of distinguishing features/limitations, claim 20 (taken as an example) recites, "**A navigation device** which is mountable on a moving object and used in a system which includes a navigation device having a recording medium which stores map data, **an information center device which records map data**, and a terminal machine which receives said map data by connecting to said information center device and updates the map data of the recording medium of said navigation device by using received map data, the **navigation device comprising; a drive**

**information collecting unit collecting drive information for a plurality of historical drive events of said moving object, where plural predetermined types of data are collected for each event of the plurality of historical drive events, a sorting unit sorting which of the plural predetermined types of data of the information having been collected by said drive information collecting unit is authorized by a user of the navigation device, to be recorded in said recording medium, a history information recording unit recording the drive information having been sorted to be recorded by said sorting unit as drive history information in said recording medium, a recording ratio calculating unit mathematically using both the drive information having been collected by said drive information collecting unit and the drive information having been recorded by said history information recording unit, to calculate a recording ratio, and a recording ratio recording unit recording said recording ratio in said recording medium.**

Turning to rebuttal of the applied reference, **Mochizuki** relates to arrangements where a server (e.g., at a centralized location) performs calculation of an optimum route to a destination, and then transmits appropriate map data corresponding to the optimum route to a mobile apparatus (e.g., navigation device). Further, the server calculates an appropriate amount of charge corresponding to the map data transmitted, and bills such appropriate amount of charge to the mobile apparatus.

At minimum, **Mochizuki is deficient** in that Mochizuki's arrangement **does not have any disclosure of a user selecting which of a plurality of differing**

**types of data collected (e.g., at the mobile apparatus) should provided to a centralized location (e.g., Mochizuki's server)**, and further, Mochizuki's arrangement **does not have any disclosure of mathematically calculating a "recording ratio" as set forth in Applicant's claims**. Accordingly, it is respectfully submitted that claim 20 would not have been obvious from the Mochizuki reference.

Claim 21 is similar to claim 20, but defines the "recording ratio" paragraph somewhat differently, i.e., "a recording ratio calculating unit mathematically using both: a number of all the plural predetermined types of the drive history information collected as a predetermined recording target; and **a number of non-pre-selected types of the drive history information which are excluded as not subject to recording according to user's directive**, to calculate a recording ratio useable for discounting a charge imposed on a user".

Again, Mochizuki is deficient in that Mochizuki's arrangement **does not have any disclosure of a user selecting which of a plurality of differing types of data collected (e.g., at the mobile apparatus) should provided to a centralized location (e.g., Mochizuki's server) so as to result in types of data which are excluded**, and further, Mochizuki's arrangement **does not have any disclosure of mathematically calculating a "recording ratio" as set forth in Applicant's claims**. Accordingly, it is respectfully submitted that claim 21 would not have been obvious from the Mochizuki reference.

Finally, regarding claim 24, such claim is directed to a differing aspect of keeping track of data which has already been sent to the centralized location. That is, claim 24 recites, "**A navigation device** which is mountable on a moving object

and used in a system which includes a navigation device having a recording medium which stores map data, **an information center device which records map data,** and a terminal machine which receives said map data by connecting to said information center device and updates the map data of the recording medium of said navigation device by using received map data, **the navigation device comprising; a history information recording unit recording drive history information of said moving object in said recording medium, a sending unit connecting to said information center device and sending said drive history information to the information center device,** and **a recording unit recording in said recording medium, sent-identification information which distinguishes between the drive history information having already been sent to said information center device and the drive history information having not been sent thereto yet.**"

**Mochizuki is again deficient** in that Mochizuki's arrangement **does not have any disclosure of any arrangement recording "sent-identification" information which distinguishes between drive history information having already been sent to a centralized location, as set forth in Applicant's claims.** Accordingly, it is respectfully submitted that claim 24 would not have been obvious from the Mochizuki reference.

As a result of all of the foregoing, it is respectfully submitted that the applied art (taken alone and in the Office Action combinations) would not support a '103 obviousness-type rejection of Applicant's claims. Accordingly, reconsideration and withdrawal of such '103 rejection, and express written allowance of all of the '103 rejected claims, are respectfully requested.



### **EXAMINER INVITED TO TELEPHONE**

The Examiner is herein invited to telephone the undersigned attorneys at the local Washington, D.C. area telephone number of 703/312-6600 for discussing any Examiner's Amendments or other suggested actions for accelerating prosecution and moving the present application to allowance.

### **RESERVATION OF RIGHTS**

It is respectfully submitted that any and all claim amendments and/or cancellations submitted within this paper and throughout prosecution of the present application are without prejudice or disclaimer. That is, any above statements, or any present amendment or cancellation of claims (all made without prejudice or disclaimer), should not be taken as an indication or admission that any objection/rejection was valid, or as a disclaimer of any scope or subject matter. Applicant respectfully reserves all rights to file subsequent related application(s) (including reissue applications) directed to any/all previously claimed limitations/features which have been subsequently amended or cancelled, or to any/all limitations/features not yet claimed, i.e., Applicant continues (indefinitely) to maintain no intention or desire to dedicate or surrender any limitations/features of subject matter of the present application to the public.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims listed above as presently being under consideration in the application are now in condition for allowance.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR '1.136. Authorization is herein given to charge any shortage in the fees, including extension of time fees and excess claim fees, to Deposit Account No. 01-2135 (Case No. 566.46566X00) and please credit any excess fees to such deposit account.

Based upon all of the foregoing, allowance of all presently-pending claims is respectfully requested.

Respectfully submitted,

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